

Decision 02-10-003 October 3, 2002

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application requesting to sell the Bidwell Water Company, Inc., and Dougall Family Trust, Craig Dougall Trustee requesting to buy this water system located in Greenville, Plumas County, California.

Application 02-05-021  
(Filed May 6, 2002)

**OPINION GRANTING SALE OF BIDWELL WATER COMPANY**

**1. Summary**

This decision grants an amended application for the sale of Bidwell Water Company, Inc. (Bidwell) to the Indian Valley Community Services District (District). The District replaces Dougall Family Trust as the acquiring entity.

**2. Proposed Transaction**

Bidwell serves some 520 connections in the unincorporated community of Greenville in Plumas County. The water system includes the Round Valley Lake Reservoir, with pipelines taking water from North Canyon Creek by gravity to a sand filtration plant. Adjacent to the filtration plant is a 700,000-gallon steel reservoir, which provides system fire flow, chlorine contact and peak day demands for the domestic water system. There are approximately 76,000 feet of steel, plastic and asbestos cement pipeline in the delivery system. The company is jointly owned by Thomas J. Jernigan and Vicky K. Jernigan.

The District is a public entity organized and existing under the Community Services District Law, Gov. Code §§ 61000, et seq.

Under a contract of sale attached to the amended application, Bidwell would convey to the District all of its real property, water rights, easements, personal property, and all other assets of the water company. The District would pay the owners of Bidwell \$230,000 and would assume liability for a promissory note to the Department of Water Resources in the amount of \$512,285 and a Cal Trans loan in the amount of \$9,800.

### **3. Background**

Bidwell has been before the Commission on a number of occasions. In Decision (D.) 98-10-025, as modified by D.99-04-028, the Commission found that the company had failed to credit \$116,277 of surcharge revenues to a balancing account earmarked for payment of a Safe Drinking Water Bond Act (SDWBA) loan. Bidwell acknowledged the underpayment but argued that the funds were redirected to utility operating expenses.

The Commission in Resolution W-4243 (January 4, 2001) reduced the customer surcharge and amended Bidwell's tariff sheets to reflect the reduction. Bidwell's application to rehear the resolution was denied in D.01-02-079. Earlier, on May 19, 1999, Bidwell's appeal of the Commission's 1998 decision was denied by the California Supreme Court.

On May 6, 2002, Bidwell filed this application, proposing sale of the water system to the Dougall Family Trust, Craig Dougall Trustee. The proposed sale was conditioned upon the Commission restoring the full amount of the surcharge to cover payments on the SDWBA loan. Before any action on this proposal, the Commission received an order of the Plumas County Superior Court, filed May 31, 2002, granting the sale of Bidwell to the District as part of a proceeding between Thomas and Vicky Jernigan.

By Administrative Law Judge's Ruling dated June 20, 2002, Bidwell was directed either to amend its application or to explain why the application should not be deemed moot in view of the Superior Court order. By letter and motion dated July 16, 2002, Bidwell amended its application to substitute the District as purchaser and to delete the purported conditions on sale with respect to restoration of the surcharge. An executed contract of sale between Bidwell and the District is attached to and made part of the amended application.

#### **4. Discussion**

Pub. Util. Code § 851 provides that no public utility other than a common carrier by railroad may sell the whole or any part of its system or property useful in the performance of its public utility service without first obtaining authorization to do so from this Commission.

Where such a sale is between private parties, the function of the Commission is to prevent impairment of public service that could result from a transfer to parties incapable of performing adequate service at reasonable rates. (*Southern Cal. Mountain Water Co.* (1912) 1 CRC 520.) But such concerns are not determinative where a community services district is involved. A community services district is an agent of the state specially formed for local performance of functions like utility service. (Gov. Code §§ 61100 and 61600.) After sale to a district, the customers must continue to receive service and rates that are "fair, reasonable, just, and nondiscriminatory." (*See, e.g., Hansen v. City of San Buenaventura* (1985) 213 Cal.Rptr. 859; *In re Park Water Company* (1988) 29 CPUC2d 415.)

In the present proceeding, the purchase price is one that the Superior Court has determined to be just compensation. The District will continue to provide water services presently provided by Bidwell, and no changes in rates or

conditions of service are proposed. It is clear on this record that the current owners of Bidwell desire to sell their water system, and the District is ready, able and willing to acquire the utility and continue to serve Bidwell's customers. Accordingly, the application for sale should be approved.

Water and sewer utilities subject to Commission jurisdiction were required by the Legislature beginning January 1, 1983, to impose user fees on customers' bills. (*See* Pub. Util. Code §§ 401, et seq.) With the end of Commission jurisdiction at the time of transfer to the District, collection of these fees will no longer be required. For that period of time prior to transfer, Bidwell will be required to collect and remit these fees before it can be relieved of its public utility responsibilities.

In Resolution ALJ 176-3088, dated May 16, 2002, the Commission preliminarily categorized this proceeding as ratesetting and preliminarily determined that hearings were necessary. Based on the record, we now conclude that a public hearing is not necessary, and our order changes the preliminary determination accordingly.

Because the amended application is unopposed, and because our decision today grants the relief requested, the requirement for 30-day public review and comment is waived pursuant to Pub. Util. Code § 311(g)(2).

## **5. Assignment of Proceeding**

Henry Duque is the Assigned Commissioner and Glen Walker is the assigned Administrative Law Judge in this proceeding.

## **Findings of Fact**

1. Bidwell serves some 520 connections in the unincorporated community of Greenville in Plumas County.

2. By a motion to amend dated June 28, 2002, Bidwell proposes to sell its water system to the District.

3. The proposed sale to the District has been approved by order of the Plumas County Superior Court, dated May 31, 2002.

4. No changes in rates or terms of service are proposed in the sale of the system to the District.

5. It can be seen with reasonable certainty that there is no possibility that the sale and transfer of this system may have a significant effect on the environment.

6. As a public utility, Bidwell remains responsible to the Commission for remittance of the Public Utilities Commission Reimbursement Fees collected up to the date of sale and transfer.

7. There is no known opposition to the proposed sale and transfer.

8. After consummation of the sale and transfer, Bidwell will provide no further public utility water service in the Greenville area, the District having assumed these duties and obligations.

### **Conclusions of Law**

1. The application for authorization of the sale of Bidwell to the District should be approved.

2. A public hearing of this application is not necessary.

3. Upon completion of the sale and transfer, and remittance of pending Public Utilities Commission Reimbursement Fees collected to the date of sale and transfer, Bidwell should be relieved of its public utility water duties and obligations.

4. This order should be made effective immediately so as to permit prompt consummation of the sale and transfer.

### **O R D E R**

**IT IS ORDERED** that:

1. The application of Bidwell Water Company, Inc. (Bidwell) for the sale of its water system to the Indian Valley Community Services District, on terms set forth in the Contract of Sale of Business and Real Property dated May 29, 2002, which contract of sale is attached to the amendment of the application dated June 28, 2002, is granted.
2. Within 10 days of the actual transfer, Bidwell shall notify the Director of Commission's Water Division in writing of the date on which the transfer was consummated. A true copy of the instrument affecting the sale and transfer shall be attached to the written notification.
3. Bidwell shall remit to the Public Utilities Commission Reimbursement Fees collected to the date of sale and transfer by the next quarter following the date of sale and transfer.
4. Upon completion of the sale and transfer authorized herein, and remittance of the Public Utilities Commission Reimbursement fees collected, Bidwell shall stand relieved of its public utility duties and obligations.
5. Resolution ALJ 176-3088, dated May 16, 2002, is amended to provide that no hearings are required in this proceeding.

6. This proceeding is closed.

This order is effective today.

Dated October 3, 2002, at San Francisco, California.

LORETTA M. LYNCH  
President  
HENRY M. DUQUE  
CARL W. WOOD  
GEOFFREY F. BROWN  
MICHAEL R. PEEVEY  
Commissioners

We will file a joint concurrence.

/s/ LORETTA M. LYNCH  
President

/s/ CARL W. WOOD  
Commissioner

## **Concurring Opinion of President Loretta Lynch and Commissioner Carl Wood**

This case involves a transfer of ownership of the facilities of the Bidwell Water Company to the Indian Valley Community Services District. The Commission has voted to approve the transfer, and I concur. This separate opinion sets forth my views on the application of Section 851 of the Public Utilities Code to this case.

Transfers of utility property are controlled by Article 6 of Chapter 4 of the Public Utilities Act, sections 851 through 856. Section 851 governs sales or other transfers of utility property. It provides in part:

851. No public utility other than a common carrier by railroad subject to Part I of the Interstate Commerce Act (Title 49, U.S.C.) shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its railroad, street railroad, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, nor by any means whatsoever, directly or indirectly, merge or consolidate its railroad, street railroad, line, plant, system, or other property, or franchises or permits or any part thereof, with any other public utility, without first having secured from the commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation made other than in accordance with the order of the commission authorizing it is void.

This provision requires that the Commission determine that the public interest is promoted before a transfer is approved. D. 71758, La Puente Cooperative Water Company, 66 PUC 614, 628 (1966); D. 70449, Plunkett Water Company, 65 PUC 313 (1966). As the California Supreme Court noted in the first case interpreting the predecessor of this section:

The commission's power is to be exercised for the protection of the rights of the public interested in the service, and to that end alone. The sales, leases, or encumbrances affected by section 51a are dispositions of property of a public utility "necessary or useful in the performance of its duties to the public." The owner may not transfer such properties unless authorized by the commission.



All that the commission is concerned with, therefore, is whether a proposed transfer will be injurious to the rights of the public. If not, the owner may be

authorized to make the transfer. Hanlon v. Eshleman, 169 C. 200 at 202 (1915), emphasis added.

Since this clear enunciation of an intention to protect consumer/user/ratepayer rights, the public interest standard in water utility transfer cases has been consistently understood by the Commission to require that the ratepayers in fact benefit from a transfer. For example, in Plunkett Water Company, supra, the Commission rejected a proposed transfer of water utility assets because the possibility of a rate increase for customers served by the transferred assets outweighed the benefits of improved fire protection. 65 PUC 313-315-16. The basis for the result was declared by the Commission to be, in part, that "...[t]he 231 customers who would be concerned in this transfer have not consented to assume the burden which would be involved, nor were they advised of the possibility or contingency...." Ibid. at 315. Captive water customers, and the facilities used to serve them with water, ought not to be traded among investors unless the Commission determines that it is in their interest that the transfer take place. Compare, D. 70772, Anderson Water Company, 65 PUC 607 (1966), approving a sale to a municipal entity proposing to upgrade and interconnect water systems, despite an admittedly inflated ratebase.

In Corona City Water Company v. Public Utilities Commission, 54 C. 2d 834, 9 Cal Rptr. 245 (1960) the California Supreme Court upheld a rejection by the Commission of the sale of a valuable water well by a utility (Corona) to a related entity asserted to be exempt from CPUC regulation (Temescal). The effect of the sale would have been to deprive the Corona customers of a lower cost source of water – i.e., to raise their rates. The issue before the Court and the Commission was whether the Commission should exert its jurisdiction over entities that were arguably exempt from regulation. In the face of a strong legal argument that – due to anomalies in the water

rights -- the well could not be pumped at all by Corona, the transferring utility, the Supreme Court upheld the Commission:

...whether or not ...an infringement [of Corona's rights] has occurred, the intercorporate relationship is fraught with hazards to Corona and its customers. Thus the largely agricultural independent stockholders of Temescal are in a position to subsidize their water service at the expense of Corona and to prevent Corona's objecting by their control of it. It is the existence of such power, not merely its improper exercise, that violates the principles underlying the exemption [from regulation.]  
9 Cal Rptr. 245 at 248

The basis for the Commission's power to approve transfers of water utility property under section 851 is the need to protect captive ratepayers from exploitation or abuse, either actual or threatened. It is the essence of the Commission's exercise of that power that it determines that the captive ratepayers will benefit from the transfer.

Similarly, section 854, which applies to transfers of control of utility companies has been consistently understood to require a finding that acquisition of control is in the public interest and will benefit the affected ratepayers, including appropriate conditions. Application of Benjamin and Lourdes Nepomuceno, D. 87781, 82 PUC 504, 505 (1977), citing Hempey v. PUC, 56 C.2d 214 (1961). In that case, the Commission went so far as to control rates charged consumers by a court-appointed receiver in order to assure ratepayer benefits. 82 PUC 504, 509, Ordering Paragraph 7.

These authorities, stretching over more than 80 years of consistent interpretation, convince us that the public interest standard under section 851 includes a requirement that the transaction result in ratepayer benefit, that there be a positive contribution to the well-being of the water users who obtain that essential service from the water utility or property being transferred. Ratepayer benefit, not ratepayer indifference is the essence of the public interest standard under section 851.

In this case the undisputed record establishes that the transferring owners desire to be rid of the obligations of providing water service, and that the transfer to the public

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agency will improve the utility's responsiveness and financial accountability without raising rates. Hence our vote of approval.

/s/ LORETTA M. LYNCH

Loretta M. Lynch  
President

/s/ CARL WOOD

Carl Wood  
Commissioner

San Francisco, California  
October 3, 2002